

[4830-01-p]

DEPARTMENT OF THE TREASURY

Internal Revenue Service

26 CFR Part 54

[REG-125592-10]

RIN 1545-BJ62

Requirements for Group Health Plans and Health Insurance Issuers Relating to Internal Claims and Appeals and External Review Processes under the Patient Protection and Affordable Care Act

AGENCY: Internal Revenue Service (IRS), Treasury.

ACTION: Notice of proposed rulemaking by cross-reference to temporary regulations.

SUMMARY: Elsewhere in this issue of the **Federal Register**, the IRS is issuing an amendment to temporary regulations published July 23, 2010 under the provisions of the Patient Protection and Affordable Care Act (the Affordable Care Act) regarding internal claims and appeals and external review processes. The IRS is issuing the temporary regulations at the same time that the Employee Benefits Security Administration of the U.S. Department of Labor and the Center for Consumer Information & Insurance Oversight of the U.S. Department of Health and Human Services are issuing a substantially similar amendment to interim final regulations published July 23, 2010 with respect to group health plans and health insurance coverage offered in connection with a group health plan under the Employee Retirement Income Security Act of 1974 and the Public Health Service Act. The temporary regulations provide guidance to employers, group health plans, and health insurance issuers providing group health insurance coverage. The text of those temporary regulations also serves as the text of these proposed regulations.

DATES: Written or electronic comments and requests for a public hearing must be received by **[INSERT DATE 30 DAYS AFTER PUBLICATION IN FEDERAL REGISTER]**.

ADDRESSES: Send submissions to: CC:PA:LPD:PR (REG-125592-10), room 5205, Internal Revenue Service, P.O. Box 7604, Ben Franklin Station, Washington, DC 20044. Submissions may be hand-delivered to: CC:PA:LPD:PR (REG-125592-10), Courier's Desk, Internal Revenue Service, 1111 Constitution Avenue, NW., Washington DC 20224. Alternatively, taxpayers may submit comments electronically via the Federal eRulemaking Portal at <http://www.regulations.gov> (IRS REG-125592-10).

FOR FURTHER INFORMATION CONTACT: Concerning the regulations, Karen Levin at 202-622-6080; concerning submissions of comments, Oluwafunmilayo Taylor at 202-622-7180 (not toll-free numbers).

SUPPLEMENTARY INFORMATION:

### **Background and Explanation of Provisions**

The temporary regulations published elsewhere in this issue of the **Federal Register** amend §54.9815-2719T of the Miscellaneous Excise Tax Regulations. The proposed and temporary regulations are being published as part of a joint rulemaking with the Department of Labor and the Department of Health and Human Services (the joint rulemaking). The text of those temporary regulations also serves as the text of these proposed regulations. The preamble to the temporary regulations explains the temporary regulations and these proposed regulations.

### **Special Analyses**

It has been determined that this notice of proposed rulemaking is not a significant regulatory action as defined in Executive Order 12866. Therefore, a regulatory assessment is not

required. It has also been determined that section 553(b) of the Administrative Procedure Act (5 U.S.C. chapter 5) does not apply to this proposed regulation. It is hereby certified that the collections of information contained in this notice of proposed rulemaking will not have a significant impact on a substantial number of small entities. Accordingly, a regulatory flexibility analysis under the Regulatory Flexibility Act (5 U.S.C. chapter 6) is not required. Section 54.9815-2719T of the temporary regulations, as amended, requires both group health insurance issuers and group health plans to establish internal claims and appeals and external review processes for adverse benefit determinations. Those processes require the plan and issuer to disclose evidence relied upon in making an adverse benefit determination, to disclose any new rationale for upholding an adverse benefit determination as part of an internal appeal, to provide notice of an adverse benefit determination and of a final internal adverse benefit determination, and to disclose the right to an external review. Under the temporary regulations, if a health insurance issuer satisfies the obligations to have effective internal claims and appeals and external review processes (including these information collection requirements that are an inherent part of those processes), those obligations are satisfied not just for the issuer but also for the group health plan. For group health plans maintained by small entities, it is anticipated that the health insurance issuer will satisfy those obligations to have effective internal claims and appeals and external review processes (including these information collection requirements that are an inherent part of those processes) for both the plan and the issuer in almost all cases. For this reason, these information collection requirements will not impose a significant impact on a substantial number of small entities. Pursuant to section 7805(f) of the Internal Revenue Code, this regulation has been submitted to the Chief Counsel for Advocacy of the Small Business

Administration for comment on its impact on small business.

### **Comments and Requests for a Public Hearing**

Before these proposed regulations are adopted as final regulations, consideration will be given to any written comments (a signed original and eight (8) copies) or electronic comments that are submitted timely to the IRS. Comments are specifically requested on the clarity of the proposed regulations and how they may be made easier to understand. All comments will be available for public inspection and copying. A public hearing may be scheduled if requested in writing by a person that timely submits written comments. If a public hearing is scheduled, notice of the date, time, and place for the hearing will be published in the **Federal Register**.

### **Drafting Information**

The principal author of these proposed regulations is Karen Levin, Office of the Division Counsel/Associate Chief Counsel (Tax Exempt and Government Entities), IRS. The proposed regulations, as well as the temporary regulations, have been developed in coordination with personnel from the U.S. Department of Labor and the U.S. Department of Health and Human Services.

### **List of Subjects in 26 CFR Part 54**

Excise taxes, Health care, Health insurance, Pensions, Reporting and recordkeeping requirements.

### **Proposed Amendments to the Regulations**

Accordingly, 26 CFR part 54 is proposed to be amended as follows:

#### **PART 54--PENSION EXCISE TAXES**

Paragraph 1. The authority citation for part 54 continues to read in part as follows:

Authority: 26 U.S.C. 7805 \* \* \*

Par. 2. Proposed § 54.9815-2719 as published on July 23, 2010, 75 FR 43330, is amended by:

1. Revising paragraphs (b)(2)(ii)(B), (b)(2)(ii)(E)(1), (b)(2)(ii)(F), (c)(2)(xi), (c)(3), (d)(1), (d)(2)(iv), and (e).

2. Redesignating (b)(2)(ii)(E)(2), (b)(2)(ii)(E)(3), and (b)(2)(ii)(E)(4) as (b)(2)(ii)(E)(3), (b)(2)(ii)(E)(4), and (b)(2)(ii)(E)(5), respectively.

3. Adding new paragraph (b)(2)(ii)(E)(2).

The revisions and addition read as follows:

§54.9815-2719 Internal claims and appeals and external review processes.

\* \* \* \* \*

(b) \* \* \*

(2) \* \* \*

(ii) \* \* \*

(B) [The text of proposed §54.9815-2719(b)(2)(ii)(B) is the same as the text of §54.9815-2719T(b)(2)(ii)(B) published elsewhere in this issue of the **Federal Register**].

\* \* \* \* \*

(E) \* \* \*

(1) [The text of proposed §54.9815-2719(b)(2)(ii)(E)(1) is the same as the text of §54.9815-2719T(b)(2)(ii)(E)(1) published elsewhere in this issue of the **Federal Register**].

(2) [The text of proposed §54.9815-2719(b)(2)(ii)(E)(2) is the same as the text of §54.9815-2719T(b)(2)(ii)(E)(2) published elsewhere in this issue of the **Federal Register**].

\* \* \* \* \*

(F) [The text of proposed §54.9815-2719(b)(2)(ii)(F) is the same as the text of §54.9815-2719T(b)(2)(ii)(F) published elsewhere in this issue of the **Federal Register**].

\* \* \* \* \*

(c) \* \* \*

(2) \* \* \*

(xi) [The text of proposed §54.9815-2719(c)(2)(xi) is the same as the text of §54.9815-2719T(c)(2)(xi) published elsewhere in this issue of the **Federal Register**].

\* \* \* \* \*

(3) [The text of proposed §54.9815-2719(c)(3) is the same as the text of §54.9815-2719T(c)(3) published elsewhere in this issue of the **Federal Register**].

(d) \* \* \*

(1) [The text of proposed §54.9815-2719(d)(1) is the same as the text of §54.9815-2719T(d)(1) published elsewhere in this issue of the **Federal Register**].

\* \* \* \* \*

(2) \* \* \*

(iv) [The text of proposed §54.9815-2719(d)(2)(iv) is the same as the text of §54.9815-2719T(d)(2)(iv) published elsewhere in this issue of the **Federal Register**].

\* \* \* \* \*

(e) [The text of proposed §54.9815-2719(e) is the same as the text of §54.9815-2719T(e) published elsewhere in this issue of the **Federal Register**].

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Steven T. Miller

Deputy Commissioner for Services and Enforcement.

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